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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 550 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE PRADIP KUMAR SARKAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

HARILAL JETASHANKAR PANDYA

Versus

MUNICIPAL PRIMARY EDUCATION DEPTT.

Appearance:

MR DD VYAS for Petitioners
RULE SERVED for Respondent No. 1
MR BP TANNA for Respondent No. 2

CORAM : MR.JUSTICE PRADIP KUMAR SARKAR

Date of decision: 26/04/2000

ORAL JUDGEMENT

Present writ petition has been filed by primary teacher working under Municipal Primary Education Department of respondent no.1. It is further submitted that in the mean time, many of them have retired from

service. These petitioners filed writ petition for directions on respondent no.1 to extend revised scale of pay in accordance with the notification of the Government dt. 10th November, 1987 Annexure : C and as amended by the notification dt. 9th February, 1988 Annexure : D. It is submitted by Mr. D.D.Vyas, learned Senior Counsel appearing on behalf of the petitioners that the Government by aforesaid notifications Annexures : C and D revised the scale of pay of the primary teachers with effect from 1st January, 1986, but the benefits of the said revised scale of pay are not being extended to the primary teacher working under the respondent no.1. Mr. Vyas, learned counsel appearing on behalf of the petitioners submitted that the aforesaid Government notification has already been extended to the respondent no.1, and therefore, the petitioners are legally entitled to get the corresponding scale of pay.

Mr. B.P.Tanna, learned Senior Counsel appearing on behalf of the respondent no.1 submitted that there is no difficulty in extending the corresponding revised pay scale to the primary teachers, but because of the dispute between two groups of primary teachers regarding their seniority, has created certain complications. It is submitted by Mr. Tanna, learned Senior Counsel appearing on behalf of respondent no.1 that in accordance with the interim order passed by this court on 5th December, 1989, selection grade scale of pay had to be extended to certain primary teachers who are not entitled to get the selection grade scale of pay. Mr. Tanna learned Senior Counsel accordingly submitted that in accordance with the judgment passed by Division Bench of this court in Letters Patent Appeal No.112 of 1981 dt. 13th April, 1993, this court has determined the guidelines under which the seniority of the primary teachers are to be fixed. Mr. Tanna, learned Senior Counsel accordingly further submitted that in accordance with the decision of Division Bench of this court in the aforesaid case, seniority of the primary teachers are to be fixed first and then in accordance with the seniority prepared by the department of respondent no.1, 20% of the primary teachers are to be placed under selection grade posts and accordingly pre-revised scale for teachers in the non-selection grade and selection grade has to be fixed and thereafter corresponding revised scale of pay can be granted to them.

Mr. D.D.Vyas, learned Senior Counsel appearing on behalf of the petitioners submitted that recently the policy of percentage has been changed and at present, primary teachers who have completed 17 years of service

are entitled to get selection grade scale. I do not like to enter into this controversy because whatever provision is there in the Rules, the selection grade post will be regulated under that Rules.

Mr. Tanna submitted that percentage has been prescribed in the revision of pay Rules, and therefore, in accordance with that revision of pay rules, percentage of selection grade will be determined.

I do not like to fix any percentage in view of the fact that such percentage are either prescribed in the revision of pay rules or under the relevant service rules or by standing orders of the Government that may be adopted by the respondent no.1 -Municipal Primary Education Department. Therefore, number of selection grade posts will be decided by the respondent no.1 in accordance with the rules. So far as granting revision of pay, the respondent no.1 is directed to fix the seniority of the Primary Teachers in accordance with the decision rendered in Letters Patent Appeal No.112 of 1981, and thereafter, place the primary teachers in the selection grade and in non-selection grade in accordance with the seniority list, and also fix their pre-revised scale, and thereafter corresponding revised scale of pay be given to the primary teachers.

Mr. Tanna, learned Senior Counsel also submitted that in accordance with the interim order passed by this court on 5th December, 1989, some primary teachers who are not eligible for selection grade of pay have been extended and in that case the question of recovery will arise.

Now it is admitted that the seniority of the primary teachers will be decided in accordance with the decision taken in Letter Patent Appeal No.112 of 1981. After preparing the select list, if any person who is found not entitled to selection grade scale of pay, and has been given such scale of pay in accordance with the interim order passed by this court, then the respondent no.1 is at liberty to realise the excess payment made to such primary teachers. This is also the condition in the undertaking already given by the petitioners to the respondent authority. Therefore, I am of the view that the interim relief should be vacated. The respondents are hereby directed to extend the revised scale of pay to the petitioners after fixing their seniority in accordance with the decision taken in Letters Patent Appeal No.112 of 1981, and place the primary teachers in the selection grade scale and non-selection grade scale

in the pre-revised pay scale, and thereafter extend the revised pay scale with effect from the date as specified in the Government notification. Entire process should be completed as early as possible, preferably within a period six months from today.

With the above observations and directions, the writ petition is disposed of. Rule is made absolute to the above extend. Interim relief granted on 5th December, 1989 stands vacated. In the facts and circumstances of the case, I make no order as to costs.

Date: 26/4/2000. (P.K.SARKAR, J.
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